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Letter dated 12 February 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached addendum to the report submitted by the Philippines (S/2001/1290) pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-25516 (E) 260202

Annex

Letter dated 8 February 2002 from the Permanent Representative of the Philippines to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to our letter No. 703 of 26 December 2001, I have the honour to transmit herewith additional information pertinent to subparagraphs (f) and (g) of paragraph 3 of resolution 1373 (2001) (see enclosure).

I shall be grateful if this information could be circulated as an addendum to the Philippine report as a Security Council document.

(*Signed*) Alfonso T. **Yuchengco**
Permanent Representative

Enclosure

Addendum to the Philippine Report on Counter-terrorism

Sub-paragraph (f) - What legislation, procedures and mechanisms are in place for insuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

The Department of Justice under Department Order (D.O.) No. 94 dated 04 March 1998 entitled, "Establishing a Procedure for Processing Application for the Grant of Refugee Status" provides parameters for the granting of refugee status in the Philippines. Refugee status shall not be granted if the applicant is proven to have committed:

a) a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such cases;
b) a serious non-political crime prior o entry into the Philippines; or
c) an act contrary to the purposes and the principles of the United Nations.

The Secretary of Justice shall interview the applicant to determine the veracity of the allegations in the application. The Secretary of Justice shall notify the Commissioner, Bureau of Immigration in writing that the application has been given due course. Upon receipt of the notice that an application has been given due course to the Commissioner, Bureau of Immigration shall suspend all cases for the deportation or exclusion of the applicant that are being undertaken by the Bureau (Section 13 of D.O.94).

Under Section 15 of D.O.94, the applicant shall be required to provide in the interview all relevant and true information to prove his claim. Any person included in the application may present evidence to support the claim.

Sub-paragraph (g) - What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Under D.O.94 the Secretary of Justice shall decide on an application within thirty (30) days after the last date of the interview unless further inquiry is required. If an application is disapproved upon grounds that are established under D.O.94, any pending immigration case against the applicant which was suspended pursuant to Section 13 of D.O.94 shall be automatically reactivated and the applicant may be re-arrested and placed in detention.

Under Section 23 of D.O.94, the refugee status granted to an applicant shall be revoked by the Secretary of Justice if he finds, after investigation, that such status was obtained through willful misrepresentation of material facts.

With regard to extradition of alleged terrorists, the Philippines has existing extradition treaties with Australia, Canada, China, Hong Kong, Indonesia, Republic of Korea, Micronesia, Switzerland, Thailand and the United States.

A copy of D.O.94 is enclosed, for the inclusion as an additional annex to the Philippine report (see appendix).

8 February 2002

Appendix

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

DEPARTMENT ORDER NO. 94

ESTABLISHING A PROCEDURE FOR PROCESSING APPLICATIONS FOR THE GRANT OF REFUGEE STATUS

Whereas, under Section 47(b) of Commonwealth Act No. 613, "The Philippine Immigration Act of !940" as amended, the President is authorized, for humanitarian reasons and when not opposed to the public interest, to admit aliens who are refugees for religious, political or racial reasons, in such classes of cases, and under such conditions as he may prescribe;

Whereas, pursuant to Presidential Decree No. 830 dated 27 November 1975 and Letter of Implementation No. 47 dated 18 August 1976, the President delegated the aforestated authority to the Secretary of Justice;

Whereas, it is necessary to establish a procedure for the grant of refugee status to aliens pursuant to the provisions of Section 47(b) of the Philippine Immigration Act of 1940, as amended, and consistent with the obligations of the Philippine Government under the 1951 United Nations Convention and the 1967 Protocol Relating to the Status of Refugees;

Wherefore, the following procedure is hereby adopted for the processing of applications for refugee status:

I. PRELIMINARY PROVISIONS

SECTION 1. Definition Of Terms. - As used in these Rules, unless the context indicates otherwise -

a. "Alien" refers to any person not a citizen of the Philippines;

b. "Application" refers to a claim filed by an alien for the grant of refugee status that is filed under these Rules;

c. "Applicant" refers to an alien in the Philippines who has filed an application. The term includes the spouse and dependent children under eighteen (18) years of age of the applicant;

d. "Act" refers to Commonwealth Act No. 613, "The Philippine Immigration Act of 1940", as amended;

e. "Government" refers to the Government of the Republic of the Philippines;

f. "Secretary" refers to the Secretary of the Department of Justice;

g. "Bureau" refers to the Bureau of Immigration;

h. "Commissioner" refers to the Commissioner of the Bureau;

i. "UNHCR" refers to the Office of the United Nations High Commissioner for Refugees.

SEC. 2. Objectives. - These rules seek to establish a fair, open, effective and speedy process for the determination of the refugee status of an alien consistent with our laws, international commitments and our humanitarian traditions and concerns.

SEC. 3. Basic Principles. - These Rules shall be governed by the following basic principles:

a. An applicant, during the pendency of his application, or a refugee shall not be expelled or returned to a country where there are valid reasons to believe that his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

b. An applicant shall not be punished on account of his illegal entry or presence in the country provided that he presents himself without delay to the authorities and/shows good cause for his illegal entry or presence.

c. Family unity shall be promoted and preserved.

II. ELIGIBILITY

SEC. 4. Eligible Applicant. - Refugee status shall be granted to an applicant who, owing to the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality, is unable or, owing to such fear, is unwilling to return to the country of his former habitual residence.

SEC. 5. Ineligible Applicant. - An applicant may not be granted the status of a refugee if it is found that:

a. he has already been granted refugee status in another country and enjoys the effective protection of that country; or

b. If he has filed an application for refugee status which was denied by the Government or UNHCR, unless the applicant presents substantive new information pertaining to his application that was not previously disclosed.

SEC. 6. Disqualified Applicant. - Refugee status shall not be granted to an applicant with respect to whom there are serious reasons for considering that he has committed -

a. a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such cases;

b. a serious non-political crime prior to entry into the Philippines; or

c. an act contrary to the purposes and principles of the United Nations.

III. FILING OF APPLICATION

SEC. 7. Application: When Filed. - An alien may file an application using the attached form at the time of entry or at any reasonable time thereafter.

SEC. 8. Where to File Application. - An application may be filed directly with the Secretary, or in the central office or any field office of the Bureau in the port of entry/admission of the applicant. In the latter case, the Commissioner or the immigration officer concerned shall forward the application to the Secretary within ten (10) days from the date of receipt thereof.

SEC. 9. Form Of Application. - An application shall be in the form prescribed by the Secretary. It shall be accomplished in triplicate and shall be placed under oath or affirmation by the applicant. The right thumbprint of the applicant shall be affixed to the application.

SEC. 10. Photographs Of Applicant. - A passport- size color photograph of the applicant, without a hat or glasses, taken within thirty (30) days of the date of application shall be attached to each copy of the application. The photographs shall have a white background, be glossy, unretouched, and not mounted.

SEC. 11. Supporting Documents. - An application shall be accompanied by the passport or other travel document of the applicant, national or state identification card from his country of origin, similar documents to establish his identity, together with the marriage certificate or similar document, in the case of the spouse, and the birth certificate, baptismal certificate or other evidence of birth, in the case of the dependent.

IV. DETERMINATION OF REFUGEE STATUS

SEC. 12. Interview of Applicant. - if the Secretary finds that the application is complete in form and is accompanied by all the required documents, he shall give due course to the application and shall interview the applicant to determine the veracity of the allegations in the application.

The Secretary shall notify the Commissioner in writing that the application has been given due course.

SEC. 13. Effect of Giving Due Course to Application. - Upon receipt of the notice that an application has been given due course, the Commissioner shall suspend all cases for the deportation or exclusion of the applicant that are being undertaken by the Bureau for alleged violation of any provision of the Act which may be inherent to illegal entry or residence such as the absence of valid travel documents.

If the applicant is under detention, the Commissioner may order the provisional release of the applicant under the recognizance of a responsible member of the community. In the proper cases, however, the applicant may be required to post a bond in an amount to be fixed by the Commissioner for his release. A certified true copy of the release order shall be sent by the Commissioner to the Secretary.

SEC. 14. Rights of Applicant. - During the interview, the applicant shall have the right to be represented by counsel and to the services of an interpreter if necessary, and to have the interview conducted in private. Upon request, applicant shall have access to UNHCR.

SEC. 15. Burden of Proof. - The applicant shall be required to provide in the interview all relevant and true information to prove his claim. Any person included in the application may present evidence to support the claim.

V. ACTION ON APPLICATION

SEC. 16. Decision of the Secretary. - The Secretary shall decide on an application within thirty (30) days after the last date of the interview unless further inquiry is required.

SEC. 17. Form of Decision. - The decision of the Secretary on an application shall be in writing. In case an application is disapproved, the decision shall state the reasons supporting the same. The applicant is furnished a copy of the decision.

SEC. 18. Effect of the Disapproval of Application. - If the application is finally disapproved, the Commissioner shall determine if the applicant shall be removed from or permitted to remain in the Philippines. Any pending immigration case against the applicant which was suspended pursuant to Section 13 of these Rules shall be automatically reactivated and the applicant may be rearrested and placed in detention.

SEC. 19. Effect of Approval of Application. - If the application is approved by the Secretary, the Commissioner and the Secretary of the Department of Foreign Affairs shall be notified thereof. Upon the application of the applicant, the Commissioner may issue an Alien Certificate of Registration and a Certificate of Residence for Temporary Visitors to the refugee and to the spouse and the dependent children under eighteen (18) years named in the application.

VI. APPEALS

SEC. 20. Request for Reconsideration. - If the application is disapproved, the applicant may file a motion with the Secretary for reconsideration of the decision within fifteen (15) days from receipt of the adverse decision. The motion shall clearly specify the grounds upon which it is based. Only one motion for reconsideration shall be allowed.

The Secretary shall act on the Motion for Reconsideration within fifteen (15) days from the receipt thereof.

SEC. 21. Judicial Appeal. - An applicant may file a judicial appeal from decision of the Secretary which denies his motion for reconsideration.

SEC. 22. Finality of Decision. - The decision of the Secretary denying an application shall become final if no motion for reconsideration or judicial appeal is filed therefrom within the prescribed period.

VII. REVOCATION AND CESSATION OF REFUGEE STATUS

SEC. 23. Revocation of Refugee Status. - The refugee status granted to an applicant shall be revoked by the Secretary if he finds, after investigation, that such status was obtained through willfull misrepresentation of material facts.

SEC. 24. Cessation of Refugee Status. - A refugee status shall cease if a refugee -

a. voluntarily re-availed himself of the protection of the country of his nationality;

b. voluntarily re-acquired his lost nationality;

c. voluntarily acquired a new nationality and enjoys the protection of the country of his new nationality;

d. voluntarily re-established himself in the country he or she left or outside which he remained owing to fear of persecution;

e. enjoys protection from the country of his nationality, because the reasons in connection with which he was granted refugee status have ceased to exist: Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of his nationality; or

f. not having a nationality, returned to his country of habitual residence due to changed circumstances; Provided, that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of his former habitual residence.

VIII. CRIMINAL CONVICTION OF REFUGEE

SEC. 25. Criminal Conviction of Refugee. - Notwithstanding section 3 (a) above, an alien who has been granted refugee status under these rules shall be removed to the country of his nationality or to his former place of

habitual residence if he is finally convicted of a serious offense in the Philippines and considered a danger to the community.

SEC. 26. Liability for Perjury. - An applicant who knowingly makes untruthful statement in his application shall be liable for perjury under the Revised Penal Code. If the perjury committed by the refugee consists of a willful misinterpretation of a material fact, his refugee status shall also be revoked pursuant to Section 23 of these Rules.

SEC. 27. Removal of Convicted Refugee. - A refugee who is convicted of a criminal offense shall only be removed from the Philippines after service of the sentence imposed upon him for the offense.

IX. MISCELLANEOUS PROVISIONS

SEC. 28. Confidentiality of Information. - The information provided by an applicant under these Rules shall be confidential and may only be used to make a determination of the veracity of the factual statements he made or to enforce the penalties imposed under the Act. Said information may, however, be made available to the UNHCR.

SEC. 29. Cooperation with the UNHCR. - In the implementation of these Rules, the Secretary may avail of the cooperation of the UNHCR.

SEC. 30. Notification of the UNHCR. - The UNHCR shall be notified of the action/decision taken by the Secretary on an application.

X. REPEALING CLAUSE

SEC. 31. Repealing Clause. - Office of Circular No. 1 dated February 12, 1981 entitled "Prescribing The Procedure For Processing Of Applications For Issuance Of Visas, Or For Change Of Admission Status To Special Non-immigrant (Refugees For Humanitarian Considerations) Under Section 47(b) Of The Philippine Immigration Act Of 1940, As Amended" and other Department orders and issuances inconsistent herewith are hereby repealed.

XI. EFFECTIVITY

SEC. 32. Effectivity. - These Rules shall take effect after fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

APPROVED.

4 March 1998

SILVESTRE H. BELLO III
Secretary of Justice

With enclosure.